

MDR Tracking Number: M5-04-1876-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution- General, 133.307 and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. This dispute was received on 02-25-04.

The Medical Review Division has reviewed the IRO decision and determined that the **requestor prevailed** on the issues of medical necessity. Therefore, upon receipt of this Order and in accordance with §133.308(r)(9), the Commission hereby orders the respondent and non-prevailing party to **refund the requestor \$460.00** for the paid IRO fee. For the purposes of determining compliance with the order, the Commission will add 20-days to the date the order was deemed received as outlined on page one of this order.

The IRO reviewed therapeutic procedures, electrical stimulation, ultrasound, and massage therapy rendered from 12/23/03 through 12/30/03 that was denied based upon "U".

The therapeutic procedures, electrical stimulation, ultrasound, and massage therapy rendered from 12/23/03 through 12/30/03 **were found** to be medically necessary.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

Based on review of the disputed issues within the request, the Medical Review Division has determined that **medical necessity was not the only issue** to be resolved. This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division.

On April 22, 2004, the Medical Review Division submitted a Notice to requestor to submit additional documentation necessary to support the charges and to challenge the reasons the respondent had denied reimbursement within 14-days of the requestor's receipt of the Notice.

In accordance with Rule 133.307 (g)(3)(A-F), the requestor submitted relevant information to support delivery of service for CPT code 99214 (office visit) on date of service 12/29/03. Reimbursement is recommended in the amount of \$101.74 in accordance with the Medicare Fee Guidelines.

On this basis, and pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay the unpaid medical fees in accordance with the fair and reasonable rate as set forth in Commission Rule 133.1(a)(8) plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this order. This Order is applicable to dates of service 12/23/03 through 12/30/03 in this dispute.

The respondent is prohibited from asserting additional denial reasons relative to this Decision upon issuing payment to the requestor in accordance with this Order (Rule 133.307(j)(2)).

This Decision and Order is hereby issued this 1<sup>st</sup> day of June 2004.

Regina L. Cleave  
Medical Dispute Resolution Officer  
Medical Review Division

RLC/rlc

April 20, 2004

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IRO Certificate # 5259

An independent review of the above-referenced case has been completed by a chiropractic doctor. The appropriateness of setting and medical necessity of proposed or rendered services is determined by the application of medical screening criteria published by \_\_\_\_, or by the application of medical screening criteria and protocols formally established by practicing physicians. All available clinical information, the medical necessity guidelines and the special circumstances of said case was considered in making the determination.

The independent review determination and reasons for the determination, including the clinical basis for the determination, is as follows:

See Attached Physician Determination

\_\_\_\_ hereby certifies that the reviewing physician is on Texas Workers' Compensation Commission Approved Doctor List (ADL). Additionally, said physician has certified that no known conflicts of interest exist between him and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for determination prior to referral to \_\_\_\_.

#### CLINICAL HISTORY

\_\_\_\_, a 46-year-old male, sustained injuries to his lower back while working for a construction company, lifting and moving scaffolding weighing over 100 lbs. This is a gentleman with a prior history of lumbar surgery in 1997. On this recent occasion, he developed a progressive onset of lower back and leg pain while moving scaffolding and pulling on some ropes. He initially sought treatment from a chiropractor, \_\_\_\_, who instituted a conservative care régime consisting of manipulation with adjunctive physiotherapeutic modalities. He initially remained at work, however deteriorated around mid-February 2003 and was taken off work. MRI was ordered of the lumbar spine on 3/7/03, this revealed significant disc herniation with cord compression at T11/12 and T12/L1 levels. \_\_\_\_ discontinued care on 3/26/03 and the patient was sent for multiple surgical consults. He eventually underwent surgical decompression with costotransversectomy, laminectomy and facet surgery with \_\_\_\_ on 8/6/03.

Postoperative rehabilitation was delayed until 10/7/03. Six weeks of postoperative care with \_\_\_\_ consisted of muscle stim, massage, ultrasound and exercises. The patient was apparently intolerant of the exercises secondary to pain. The patient's range of motion improved between 10/7/03 and 10/31/03, although he continued to have considerable subjective difficulty. He was seen for an insurance-guided RME by \_\_\_\_ on 10/29/03. \_\_\_\_ was under the impression that continuing ongoing chiropractic care had taken place, whereas in fact the patient had undergone only about six weeks prior to surgery and was only in the second week of postoperative rehab at the time of his consultation. There was a conflict of opinion between the treating surgeon and \_\_\_\_, in that \_\_\_\_ felt that the claimant was doing better. \_\_\_\_ discontinued care at the end of December 2003, pending further workup and second opinions. A follow-up MRI performed 1/7/04 demonstrated continuing disc herniation with neurological compromise and T11/12 and T12/L1 levels. An independent designated doctor's appointment (\_\_\_\_) felt that the patient was far from doing well, and felt that a CT/myelogram was needed along with possible further surgical intervention.

#### REQUESTED SERVICE (S)

Medical necessity of therapeutic procedures (97150), electrical stimulation (G0283), ultrasound (97035) and massage therapy (97124): between 12/23/03 -12/30/03.

#### DECISION

Approved.

#### RATIONALE/BASIS FOR DECISION

*The standard of medical necessity in Workers Comp, according to the Texas labor code 408.021 (entitlement to medical benefits) is that an employee who sustained a compensable injury is entitled to all healthcare reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to healthcare that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment.*

This case has obviously been a complicated one to manage. The documentation supports that the patient suffered with ongoing objective signs of significant difficulty, supported also by opinions from a number of Independent physicians. The care provided by \_\_\_\_ falls well within accepted clinical standards and guidelines, and appeared to satisfy the above-mentioned requirements for medical necessity.

Current clinical guidelines for standard of care support a trial period of spinal manipulation with adjunctive procedures as being appropriate (Hansen DT: Topics in Clinical Chiropractic, / The U.S. Department of Health and Human Services Agency For Health-Care Policy and Research (AHCPR), publication No. 95-0643 entitled Acute Low Back Problems in Adults: Assessment and Treatment, / Haldeman S., Chapman-Smith D, Peterson DM., eds. Guidelines for Chiropractic Quality Assurance and Practice Parameters, / Shekelle PG, Adams AH, Chassin MR, et al: The Appropriateness of Spinal Manipulation for Low Back Pain, Indications and Ratings of a Multidisciplinary Expert Panel, / Souza T: Differential Diagnosis for a Chiropractor: Protocols and Algorithms, Official Disability Guidelines)

The guidelines are generally in agreement that initial trial period of manual therapy (passive care) consists of up to two weeks at a visit frequency of 3-5 visits per week (as appropriate), with appropriate tapering of care and transition to a more active mode of care, eliminating passive modalities, followed by a re-evaluation. If, at that time, there is not a significant documented improvement, a second course of two weeks of care, utilizing different types of manual procedures is appropriate. In the absence of documented improvement, manual procedures are no longer indicated after four weeks. If a patient does not have signs of objective improvement in any two successive two-week periods, referral is indicated<sup>1</sup>. Contemporary treatment guidelines generally agree with the Mercy document that all episodes of symptoms that remain unchanged for 2-3 weeks should be evaluated for risk factors of pending chronicity, with treatment plans altered to de-emphasize passive care and refocus on active care approaches.

In the situation, there is sufficient evidence to show that this case showed significant factors for complexity requiring extended trial periods of care. The patient did poorly with active treatment and required passive modalities as an adjunct. Functional improvement was obtained and demonstrated with treatment, and care was then discontinued in a reasonable time frame once it was established that therapeutic gains were no longer to be realized.

The above analysis is based solely upon the medical records/tests submitted. It is assumed that the material provided is correct and complete in nature. If more information becomes available at a later date, an additional report may be requested. Such may or may not change the opinions rendered in this evaluation.

Opinions are based upon a reasonable degree of medical probability and are totally independent of the requesting client.